

REMARKS

By this Amendment, no Claims were amended and no claims were added or deleted. No new matter has been added by these amendments. As a result, Claims 1-7 and 10-23 are pending in the case.

In the Office Action, the Examiner rejected Claims 1-3, 7, 10 and 14-15 under Sections 102(b) and 103(a) as being anticipated by and obvious in view of U.S. Patent No. 3,938,441 to Sewell et al. ("Sewell") and obvious in view of Sewell and U.S. Patent No. 3,805,766 to Hammon ("Hammon"). The Examiner also rejected Claims 4-6, 11-13 and 16-23 under Section 103(a) as being unpatentable over Sewell in view of U.S. Patent No. 4,616,711 to Johnson ("Johnson") or U.S. Patent No. 3,938,441 to Sewell et al. ("Sewell et al.") in view of Hammon and Johnson.

Before proceeding, Applicant would like to briefly make mention of the prior art cited.

Sewell discloses the use of continuous rod warhead using ribbon shaped rods plug welded together as a terrain clearing device. The device is exploded on the surface of the ground and the expanding continuous rod bundle severs the foliage (e.g., trees) in a circular area around the site of the explosion. The area cleared is alleged to "immediately ready to be utilized as a helicopter landing zone, fire lane or fire break." The patent notes that the warhead can be air dropped so as to strike the ground in a substantially upright position with the contact fuse striking first.

Sewell et al. merely shows the use of an expelling explosive apparatus to clear bushes and trees from terrain. The clearing appears to be in a linear direction.

Johnson discloses the use of an aircraft to drop exploding canisters of foam (non-explosive ammunition) to create the back-boundaries/perimeter of a back-burn area.

Hammon discloses a field burning apparatus capable of clearing combustible materials to produce a firebreak extending along a path and to throw cleared material to one side of the firebreak.

As noted previously Sewell does not disclose or make obvious (alone) the elements of Claims 1 and 10, namely "using an explosive munition to remove burnable material and to perform at least one of the firefighting tasks of a) creating a back burn, or b) mopping-up the

wildfire.” Put another way, Sewell neither discloses using explosive munition to create a back burn, nor using explosive munition in mop-up operations. Sewell only discloses using a warhead to clear a helicopter landing zone, fire lane, or fire break (column 2, lines 6-9).

The Examiner’s conclusion in paragraph 7 that “to create a fire line, a back burn or mopping up a fire is similar as to create a firebreak” is incorrect. In addition, it is neither supported or suggested in Sewell. By way of example, the mopping-up operation is defined in Application as “ordnance is used to expose buried smoldering fuel and disperse this fuel by exploding hot spots.” (Specification at page 3, line 11 et seq.) In also states:

Once a fire has been brought under control, mop-up operations must be conducted to insure the fire does not rekindle. During mop-up it is important to reach buried pockets of smoldering fuel. In order to do so, in one embodiment of the present invention, high explosive ordnance is detonated within the smoldering pockets of the fire 10, thereby dispersing fuel into smaller pockets which will more quickly extinguish themselves, or can be more easily extinguished using conventional fire fighting techniques such as the application of water or fire suppressing chemicals. The high explosive ordnance is preferably dropped from an aircraft to obviate the need for fire fighters to approach close to the smoldering area, which may be dangerous. The fire fighters indicate the coordinates of the still smoldering area to the aircraft, which then releases the appropriate ordnance. Appropriate ordnance may include bombs or rockets of varying sizes depending on the size of the hot spot to be dispersed. The fire fighters then move in and extinguish the smoldering materials using conventional wild fire fighting techniques.

(Specification at page 9, lines 7-20). This is directly opposed to Sewell’s teachings which specifically relies on the apparatus to affect foliage above ground. See Sewell, Col. lines 47-57. Great care is spent by Sewell to ensure the ground is not disturbed.

In addition, Sewell presents no indication how to conduct a back burn with above-land circularly exploding devices.

Accordingly, Sewell cannot anticipate or solely make obvious Applicant’s claims.

Adding Hammon to the mix to build a Section 103 rejection is also useless. Hammon merely shows the use of a machine to create a firebreak. It shows no more. Alleging it discloses more as the Examiner has done here is simply wrong. In addition, there is absolutely no reason for combining Hammon and Sewell. A combination of the two would merely yield an above-

ground explosive clearing foliage with a separate man-driven machine creating a firebreak. This is a far cry from the Claims as presented by Applicant.

Johnson adds nothing to the mix as it merely shows using foam canisters to create a the back-boundaries/perimeter of a back-burn area.

It is unquestionable the Examiner is merely picking and choosing individual aspects found in a diverse art and combining them as he sees fit without any rhyme or reason. This Monday-morning quarterbacking using the Applicant's specification as a blue print is strictly forbidden. There is absolutely nothing in the art linking it together. The fact that explosives are used to as a terrain clearing device and the fact that the art mentions different techniques for each of removing fuel to create a fire line, creating a back burn, and mopping-up the wildfire, does not mean one can and should combine. The Examiner is taking the Sewell reference and saying it can be applied in many ways other than that disclosed. No where does the art even hint at doing this.

In addition to only presenting generalities, the Examiner woefully fails in particulars. Specifically, no where in the Office Action does the Examiner point to art disclosing the individual elements, such as for example, Claim 23:

A method for controlling a wildfire having a tree canopy comprising the steps of

- a) employing ordnance to removing fuel to create a fire line between two anchor points, the fire line being positioned substantially perpendicular to the direction of travel of the wildfire;
 - b) employing ordnance to remove fuel to create flank extensions of the fire line originating from the anchor points in a direction generally along a side of the fire or towards the fire and substantially perpendicular to the fire line;
 - c) employing ordnance to create a back burn to widen the fire line;
 - d) employing ordnance to mop-up the wildfire; and,
 - e) employing ordnance to knock down the tree canopy,
- all of the above being performed while using one or more vehicles supporting ordnance to deliver the ordnance, such vehicles being selected from the group comprising airplanes, helicopters, tanks, trucks and cars and the ordnance employed being selected from the group comprising air-to-ground missiles, high-explosive incendiary ammunition, high-explosive bombs, explosive shells, dynamite, non-explosive ammunition, ammonium nitrate charges, magnesium ethylene glycol charges, and ordnance which uses a flammable liquid.

Like Claim 23, Applicant believes all of the claims in the present application are allowable over the art cited and an Action to this end is earnestly requested. If it would expedite the progress of this Application through the examination process, the Examiner is authorized to call the undersigned attorney.

The Examiner and Commissioner are hereby authorized to charge any additional fees associated with this Response or refund any overpayments associated with this Response to our deposit account, Deposit Account No. 23-0280.

Respectfully submitted,

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CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service with first class postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner For Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on June 2, 2006.

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